



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
[www.uspto.gov](http://www.uspto.gov)

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/454,252	12/02/1999	JERRY PELLETIER	248/037	3544
30542	7590	10/07/2003	EXAMINER	
FOLEY & LARDNER			MITRA, RITA	
P.O. BOX 80278			ART UNIT	PAPER NUMBER
SAN DIEGO, CA 92138-0278			1653	
DATE MAILED: 10/07/2003				

Please find below and/or attached an Office communication concerning this application or proceeding.

*File Copy*

Office Action Summary	Application No.	Applicant(s)
	09/454,252	PELLETIER ET AL.
	Examiner Rita Mitra	Art Unit 1653

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 31 March 2002.
- 2a) This action is FINAL.      2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 100, 101 and 106-113 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) 101, 106 and 110-113 is/are allowed.
- 6) Claim(s) 100 and 107-109 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on 12 June 2002 is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
If approved, corrected drawings are required in reply to this Office action.
- 12) The oath or declaration is objected to by the Examiner.

#### Priority under 35 U.S.C. §§ 119 and 120

- 13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) The translation of the foreign language provisional application has been received.
- 15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s). _____  |
| 2) <input checked="" type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449) Paper No(s) <u>25</u> . | 6) <input type="checkbox"/> Other: _____                                    |

Application/Control Number: 09/454,252

Art Unit: 1653

## **DETAILED ACTION**

### ***Status of the Claims***

Applicants' response to office action dated December 31, 2002 (paper# 23) filed on March 31, 2002 is acknowledged. Claims 102-105, 114 and 115 have been canceled. Therefore, claims 100, 101, 106-113 are currently pending to which the following grounds for rejection are or remain applicable.

### ***Response to Remarks and Arguments***

#### **Objections to Drawings**

In response to the formal drawings submitted on June 12, 2002, the Draftsperson has indicated that the Drawings submitted are not acceptable. See form 948 attached to this office action.

#### **Information Disclosure Statement**

References submitted by the applicants have been considered (except EP0748871 A1). Reference EP0748871 A1 has not been considered because an English translation has not been provided, see Form 1449.

Claims 102-105, 114 and 115 rejected under **35 U.S.C. 112, first paragraph** is withdrawn in view of Applicants' cancellation of the claims (paper #25).

#### **New grounds of rejection**

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

Art Unit: 1653

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 100, 107, 108 and 109 are rejected under 35 U.S.C. 102 (b) as being anticipated by Jaynes et al. (WO 89/00199, January 12 1989, IDS ref A10). Jaynes et al. teach antimicrobial polypeptides, such as cecropins, attacins, lysozymes and phage derived polypeptides from phage 22, lamda phage and phage PhiX174 (see abstract, Table 1 at page 7), which have utility as therapeutic agents or antimicrobials for bacterial infections (page 8). WO'199 also teaches the in vitro effectiveness of the antimicrobial polypeptides by exposing a known number of viable bacteria, e.g., E.coli and B. abortus to one or more of the antimicrobial polypeptides, (page 9 and Table 3 at page 21). Table 3 indicates that the antimicrobial agent cecropin inhibits E.coli growth. Thus the antibacterial agent of WO'199 reference is considered for the antibacterial agent used in the method of claim 1 of the instant application, where said method comprises contacting a bacterial protein with a bacteriophage polypeptide that inhibits bacterial growth. The phage derived polypeptides from phage 22, lamda phage and phage PhiX174 of WO'199 reference are considered for the plurality of bacteriophage polypeptides of claims 107, 108 and 109 of the instant application, thus anticipating claims 107, 108 and 109.

### ***Conclusion***

Claims 100, 107, 108 and 109 are rejected. Claims 101, 106 and 110-113 are allowable.

### ***Inquiries***

Any inquiry concerning this communication or earlier communications from the Examiner should be directed to Rita Mitra whose telephone number is (703) 605-1211. The Examiner can normally be reached from 9:30 a.m. to 6:30 p.m. on weekdays. If attempts to reach the Examiner by telephone are unsuccessful, the Examiner's supervisor, Dr.Christopher Low, can be reached at (703) 308-2923. Papers related to this application may be submitted to Technology Center 1600 by facsimile transmission. Papers should be faxed to Technology Center 1600 via the PTO Fax Center located in Crystal Mall 1.

Art Unit: 1653

The faxing of such papers must conform with the notice published in the Official Gazette, 1096 OG 30 (November 15, 1989). The Fax Center number is (703) 308-4242. Any inquiry of a general nature or relating to the status of this application should be directed to the Group receptionist whose telephone number is (703) 308-0196.

Rita Mitra, Ph.D.  
October 6, 2003

*christopher s. f. low*  
CHRISTOPHER S. F. LOW  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 1600